Pacific Maritime Association *and* John A. Ramirez

International Longshoremen and Warehousemen's Union *and* John A. Ramirez

International Longshoremen and Warehousemen's Union Local 13 *and* John A. Ramirez

International Longshoremen and Warehousemen's Union Local 18 *and* John A. Ramirez. Cases 20–CA–22687, 20–CA–22905, 20–CB–8007, 20–CB–8193 (formerly 21–CB–10580), 20–CB–7998, and 20–CB–8136

July 28, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On October 16, 1991, Administrative Law Judge Jay R. Pollack issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs,[1] and the Respondent Employer Association and the Respondent Union filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Orders.

The General Counsel has excepted to the judge's conclusion that Local 13 did not violate its duty of fair representation to Ramirez, the alleged discriminatee, by its failure to oppose Ramirez' placement on the nondispatch list. The General Counsel argues, in effect, that Ramirez relied to his detriment on Local 13 Secretary-Treasurer Lomeli's statement to him that he did not need to attend the May 4, 1989 meeting of the Los Angeles port labor relations committee and that Lomeli would take care of ''it.'' The General Counsel contends that Lomeli's subsequent failure to tell the committee that he had excused Ramirez from attending its May 4 meeting and to explain to the committee that Ramirez had failed to meet the work availability requirement because he was taking care of his ailing father resulted in Ramirez being placed on the nondispatch list. We disagree. Initially, we note that the record makes clear that when Lomeli told Ramirez that he would take care of ''it,'' he was referring to Ramirez' possible deregistration. Lomeli, in fact, did successfully oppose Ramirez' deregistration and the General Counsel does not contend that Local 13 violated its duty of fair representation in this regard. As to Ramirez' placement on the nondispatch list, we agree with the judge that even if Lomeli had explained Ramirez' absence, the result would not have been different. In this regard, we emphasize that Ramirez' reason for failing to meet the work availability requirement, the illness of a family member, was not an excuse that would have exempted Ramirez from the availability requirement. Finally, we note that placement on the nondispatch list was not punitive, but simply a device to require longshoremen to return to work in their home ports where they were needed. Thus, Ramirez would have been taken off the nondispatch list whenever he attended a Los Angeles port labor relations committee meeting and informed it that he was ready for work. Ramirez did not do this, however, because, as he himself testified, he never intended to return to work in Los Angeles.

ORDER

The National Labor Relations Board adopts the recommended Orders of the administrative law judge and orders that the Respondents, the International Longshoremen and Warehousemen's Union and the International Longshoremen and Warehousemen's Union Local 13, Los Angeles, California, their officers, agents, and representatives, shall take the action set forth in the Orders.

IT IS FURTHER ORDERED that the complaint is dismissed as to Respondents Pacific Maritime Association and International Longshoremen and Warehousemen's Union Local 18.

Jonathan Seagle, Esq., for the General Counsel.
Craig Epperson, Esq. (Lillick & Charles), of San Francisco, California, for Respondent Employer.
Robert Remar, Esq. (Leonard, Carder, Nathan, Zuckerman, Ross, Chin & Remar), of San Francisco, California, for Respondent Unions.
Kevin S. Robinson, Esq., of Davis, California, for John Ramirez.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge. I heard this case in trial at Sacramento, California, on various dates, between May 1990 and February 1, 1991, and in San Francisco, California, on February 5, 1991. On June 6, 1989, John A. Ramirez filed the charge in Case 20–CB–7998 alleging that International Longshoremen's and Warehousemen's Union, Local 18 (Respondent Local 18), committed certain

[1] The Charging Party has requested oral argument. This request is denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his decision, the judge spelled Richard Lomeli's name incorrectly as ''Lomali.'' We correct this inadvertent error.

violations of Section 8(b)(2) and (1)(A) of the National Labor Relations Act (the Act). On June 19, 1989, Ramirez filed the charge in Case 20–CB–8007 against International Longshoremen's and Warehousemen's Union (Respondent International). The charge in Case 20–CB–8007 was amended on September 25, 1989. Ramirez filed the charge in Case 21–CB–10580 against International Longshoremen's and Warehousemen's Union, Local 13 (Local 13), on July 11, 1989. On November 17, 1989, Case 21–CB–10580 was transferred from Region 21 to Region 20 and renumbered 20–CB–8193. Ramirez filed the charge in Case 20–CB–8136 against Respondent Local 18 on September 25, 1989. Charges against the Pacific Maritime Association (Respondent Employer or PMA), were filed in Case 20–CA–22687 and Case 20–CA–22905, on June 20, and September 25, 1989, respectively.

On October 31, 1989, the Regional Director for Region 20 of the National Labor Relations Board issued a consolidated complaint and notice of hearing against Respondents, alleging that Respondent Unions violated Section 8(b)(2) and (1)(A) of the Act and that Respondent Employer violated Section 8(a)(3) and (1) of the Act. Thereafter, the Regional Director issued nine additional separate complaints and nine orders consolidating the cases for hearing. On January 30, 1991, the Regional Director issued the amended consolidated complaint which formed the basis of this proceeding. Respondents filed timely answers to the complaints, denying all wrongdoing.

On February 8, 1991, I approved, and transferred to the Board for its approval, a formal settlement agreement which disposed of a related amended consolidated complaint involving the Respondents' joint dispatch hall in Sacramento, California. The Board approved the settlement by a Decision and Order dated April 12, 1991. That settlement resolved some of the allegations involved in Ramirez' charges. The instant decision deals only with the allegations of Ramirez' charges which were not resolved by the formal settlement agreement. At issue herein is whether Respondents unlawfully refused to transfer Ramirez from Los Angeles to Sacramento and later refused to dispatch him in Sacramento. Further at issue is whether certain officials of Respondent Unions made unlawful threats to Ramirez and other employees. Finally, the consolidated complaint alleges that Respondent Unions violated their duty of fair representation in failing to defend Ramirez from lawful disciplinary action by Respondent Employer.

The parties have been afforded full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. On the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs of the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Employer, a California corporation, with a principal place of business in Oakland, California, has been an organization composed of employers engaged in business as steamship companies, stevedore companies, and operators of marine terminals. Respondent Employer exists, for the purpose, inter alia, of representing its employer-members in negotiating and administering coastwise and local collective-bargaining agreements with Respondent International and its local unions. During the 12 months prior to issuance of the complaint, the employer-members of Respondent Employer derived gross revenues in excess of $500,000 from the transportation of goods and materials between ports in the State of California and ports in the States of Oregon and Washington. Accordingly, Respondents admit and I find that Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent International, Respondent Local 13, and Respondent Local 18, are each a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

The gravamen of the amended consolidated complaint is that the Respondent International and its affiliates, Respondent Local 13 and Respondent Local 18 caused the employer-members of the Respondent Employer to discriminate against John Ramirez, because of his protected activities, in violation of Section 8(b)(1)(A) and (2) of the Act. Respondent Local 18 and Respondent International are specifically charged with causing the rejection of Ramirez' application to transfer from the Port of Los Angeles to the Port of Sacramento and the revocation of Ramirez' status as a visitor in the Port of Sacramento for unlawful reasons. Respondent Local 13 is charged with causing Ramirez to be displaced on the nondispatch list in the Port of Los Angeles. Moreover, the General Counsel contends that representatives of Respondent International and Respondent Local 13 issued statements which were independently violative of Section 8(b)(1)(A).

The General Counsel argues that Respondent Employer had notice of the discriminatory motivation of the actions of Respondent International and its Locals and accordingly violated Section 8(a)(3) and (1) of the Act by the denial of Ramirez' transfer application and the revocation of his visitor's status.

Respondent Employer and Respondent Unions deny any unlawful motive in denying Ramirez a transfer. They contend that Ramirez was not entitled to a transfer under the collective-bargaining agreement and that Ramirez was needed in Los Angeles. They further argue, even if an unlawful motive had been shown, Ramirez would have been denied a transfer in any event for legitimate business reasons. Respondents contend that Ramirez was required to return to his job in Los Angeles and that his subsequent discipline was as a result of his failure to make himself available for work, a nondiscriminatory job requirement.

B. *Ramirez' Work History*

John Ramirez worked for approximately 12 years as a longshoreman in Sacramento, California. He worked as a casual employee, receiving dispatches from the dispatch hall jointly operated by Respondent Employer and Respondent Local 18. In August 1987, Ramirez was registered as a class ''B'' longshoreman in the Port of Los Angeles. The dispatch hall for the Port of Los Angeles also covers the Port of Long Beach. Respondent Local 13 has jurisdiction over Los Angeles/Long Beach. Ramirez has been a member of Local 13 since August 1987. While working as a casual employee,

Ramirez had not been a member of the Union. Ramirez went to Los Angeles because that port offered an opportunity for him to become a registered longshoreman. It was always his intention to return to the Port of Sacramento. His family continued to live in the Sacramento area.

In January 1989, it appeared that the Port of Sacramento would open registration for class ''B'' longshoremen. That port had not registered any longshoremen in over 20 years. This case concerns Ramirez' attempt to obtain a permanent transfer to Sacramento.

C. *The Sacramento Registration*

On January 10, 1989, the Sacramento Port Labor Relations Committee (PLRC), met to consider the needs of the port for an additional registration of class ''B'' longshoremen. The employer representatives on the PLRC proposed that five new ''B'' longshoremen be registered in 1989, three more in 1990 and three in 1991. The Employers proposed that the program of registrations be ongoing and that the needs of the port be continually reviewed. The Local 18 representatives answered that the port could support more new registrations and that the numbers proposed by the Employers were inadequate. It was decided that since both sides agreed to a new registration, only the number of employees was at issue, the question of the number of new registrations should be submitted to the Joint Coast Labor Relations Committee (CLRC) for resolution.

On January 25, the CLRC approved a compromise of 17 additional class ''B'' longshoremen in the Port of Sacramento. Fifteen new registrants were to be selected from the ''current applications on file'' according to ''the highest hours of work in covered employment for the payroll year of 1988, up to and including 1989 year to date.'' The remaining two registrants were to be class ''B'' longshoremen in ''Low Work Opportunity Ports'' who would be offered the opportunity to transfer under the provisions of the collective-bargaining agreement. A low work opportunity port, under the collective-bargaining agreement, is a port where the employees are working one half or less of their guaranteed hours under the pay guarantee plan.

On February 9, the Sacramento PLRC interviewed the 16 applicants with the highest number of hours under the CLRC formula. Although the CLRC had authorized 15 new registrants, the PLRC had agreed to include both an employee who had erroneously been excluded from the list of 15 and the 16th ranked employee who had erroneously been included. The mistake was a clerical error by the Employers and therefore, the Employer and union representatives agreed to seek permission from the CLRC to register one additional employee. That request was granted on February 17. On March 9, the Sacramento PLRC issued its notice listing the names of the 16 employees selected.

Ramirez had filed an application with the Sacramento PLRC during 1988 for registration as a class ''B'' longshoreman. However, since he was already registered in the Port of Los Angeles, his application was not considered as part of the new registration.[1] Further, he did not qualify as a low work opportunity port transfer because Los Angeles was a high work opportunity port. Los Angeles was probably the busiest port on the West Coast.

During January 1989, Ramirez learned of the possibility of new registrations at the Port of Sacramento. On January 27, he requested ''inclusion on the limited registration list of the Port of Sacramento in accordance with Supplement I, Section 1.7 of Pacific Coast Longshore Contract.'' He noted that the Port of Sacramento was registering 15 longshoremen and requested to be included. Ramirez argued that he had worked in Sacramento for 12 years and that his father, now retired, was a charter member of Local 18. Ramirez also argued that because of his parents' age, he needed to return to Sacramento to help care for them.

On February 9, Ramirez attended a meeting of the Sacramento PLRC and presented the written arguments that he should be permitted to transfer or be included in the new registration. After, the PLRC read Ramirez' argument, Buddy Linker, dispatcher for the joint dispatch hall, asked Ramirez whether he wanted to bump someone off the ''B'' list. Linker suggested that such bumping would be unfair to the other employees in Sacramento. Ramirez replied that he didn't intend to bump anybody, he just wanted registration for himself. Ramirez stated that he needed to return to Sacramento because his parents were getting older and depended on him. Ramirez stated his belief that the Union should grant such a request.

On February 10, Pete Ramirez, Ramirez' father, became critically ill with a form of gangrene. Pete Ramirez was in intensive care for a week and remained hospitalized for 3 additional weeks. Ramirez later sought a transfer on a hardship basis bottomed on his father's illness. Ramirez had moved to Sacramento from Los Angeles on February 4, prior to his father's illness. Prior to his illness, Pete Ramirez had attempted to use his influence with the Union to secure registration in Sacramento for his son.

On February 21, Ramirez filed an unfair labor practice charge in Case 20–CB–7998 against Respondent Local 18 for its refusal to transfer or register him. This charge was withdrawn on March 16, prior to Ramirez giving any evidence or testimony. After June 6, Ramirez filed six charges which led to the issuance of complaints against Respondents International, Local 13, Local 18, and PMA.

D. *Ramirez' Transfer Request*

On February 21, Ramirez wrote to Richard Lomali of Local 13 and Charles Young of PMA in Southern California asking for a transfer and that he be given class ''A'' registration. Ramirez had no basis for seeking class ''A'' registration. He testified that since he was seeking a transfer, he might as well also ask for class ''A'' registration.

Ramirez informed Lomali and Young that there was ''no way'' that he would leave his parents and return to Los Angeles. On the next day, Ramirez wrote Jim Herman, president of Respondent International and William Coday, president of Respondent PMA, asking that they compel the Sacramento PLRC to approve Ramirez' transfer request. Ramirez sought a transfer based on, among other things, his father's status as a charter member of Local 18. He sent copies

[1] The failure to consider Ramirez and other Los Angeles longshoremen for the Sacramento registration was resolved by the formal settlement agreement. The consolidated complaint, as amended during the hearing, no longer alleges the failure to consider Ramirez, or to include him in the Sacramento registration, as an unfair labor practice.

of these letters to a State Assemblyman in an attempt to use his ''political connection.''

On February 28, Ramirez informed the Sacramento PLRC that his father was critically ill and that he was requesting a ''hardship transfer.'' There is no provision for a hardship transfer under the collective-bargaining agreement. The parties often referred to supplement I transfers as hardship transfers.

Ramirez told the PLRC that he needed to be in Sacramento to help his mother care for his father. Ramirez was told that there was no authority for the PLRC to grant him a transfer under supplement I. He was also advised to keep in contact with the Port of Los Angeles PLRC to avoid deregistration. Ramirez had received similar advice on several occasions from Charlie Young, PMA representative on the Los Angeles PLRC.

The PLRC informed Ramirez that he would have to present his request for a transfer to Local 18's executive board and to the union membership. Ramirez requested that he be permitted to work in Sacramento while his transfer was under consideration. The PLRC answered that it would be willing to allow Ramirez to work in Sacramento based on his hardship. The PLRC informed Ramirez that it did not have approval to transfer class B longshoremen from high work ports such as Los Angeles. The committee members also told Ramirez to keep in contact with the port of Los Angeles so that he would not be deregistered.

At that same meeting Ramirez presented a written request for a transfer from Los Angeles to Sacramento. Ramirez stated that his father had ''a rare form of gangrene which almost took his life.'' Based on his father's illness, Ramirez sought a transfer into Respondent Local 18.

On March 6, Ramirez attended a meeting of Local 18's executive board and submitted a copy of the letter he had submitted to the PLRC on February 28. Ramirez sought a hardship transfer based on his father's illness. He stated that his mother was unable to care for his father and asked that he be permitted to seek a transfer from the membership of Local 18, at the meeting scheduled for the following evening. Peterson answered that it was not necessary for Ramirez to attend the meeting, that he (Peterson) would present the transfer request to the membership.

Approximately 2 days later, Ramirez went to the union hall and asked Peterson what had occurred at the membership meeting. Peterson told Ramirez that he had not brought up Ramirez' transfer request or any other transfer because of the possibility of litigation over the class ''B'' registration. Peterson told Ramirez that the executive board and membership refused to support his transfer because of ''all the grievances and possibility of litigation.'' Approximately 15 grievances had already been filed by casual employees seeking inclusion in the class ''B'' registration. Peterson told Ramirez that he needed to get a transfer from the Coast CLRC rather than the Local Union.

On March 9, the Sacramento PLRC sent a letter to Ramirez denying his request for a transfer. The letter stated sympathy for Ramirez' hardship. However, the PLRC stated that it was not approving any transfer requests, whether from class ''A'' or ''B'' registrants, except for the two transfers from low work opportunity ports ordered by the CLRC.

On March 13, Jim Herman, president of Respondent International wrote Ramirez indicating that he could not help Ramirez obtain a transfer. Herman explained that transfers were subject to the discretion of the port PLRC's based on several factors, particularly ''manpower needs.'' While Herman expressed sympathy for the senior Ramirez' illness, he stated that the illness was not grounds for a ''permanent transfer.''

On March 15, Ramirez filed an appeal, by letter, with the CLRC concerning the denial of his transfer request by the Sacramento PLRC and the failure of the PLRC to include him in the class ''B'' registration. Ramirez grounded his appeal on section 17 of the collective-bargaining agreement. Ramirez charged that favoritism was being given ''towards a few people on the registered list of Sacramento.'' He further contended that past practice supported the right of a class ''B'' registrant to apply for registration in another port.

General Counsel bases his case of unlawful motivation, in large part, on the alleged statements of Robert Olvera, a representative of Respondent International. Ramirez testified that during the week of March 20, 1989, Olvera referred to him as someone who was suing the Union. On the following day, Ramirez provided Olvera with a copy of his withdrawal of the unfair labor practice charge.[2] According to Ramirez, Olvera answered ''You have to go kiss ass. You have to kiss the membership's ass. You have to take them out to dinner or something.'' At the time of the instant hearing, Olvera was in a coma and, therefore, unable to testify.[3]

On March 20, Ramirez spoke with Richard Lomali, secretary-treasurer of Respondent Local 13. Ramirez told Lomali that he had been ''pleading all week'' attempting to obtain a transfer to Sacramento. Lomali acknowledged that he knew of Ramirez' efforts pertaining to his transfer. Lomali asked where Ramirez' ''coat tails'' were. Lomali also asked why his ''coat tails'' were not helping him. According to Ramirez, Lomali said that if all five referrals (five Los Angeles longshoremen seeking to return to the Sacramento area) were sent to the CLRC, the CLRC could decide the issue and enable Peterson to save face in front of Respondent Local 18. Lomali was not called to testify and, therefore, Ramirez' testimony stands uncontradicted. No explanation was given for the failure to call Lomali as a witness.

Shortly thereafter, Ramirez spoke again with Lomali in the presence of Romero Hernandez, a member of ILWU Local 10. Lomali advised Ramirez that he needed to write a letter of apology to the CLRC for going to the NLRB and that he should send the letter to Olvera. Hernandez suggested that the letter of apology would break down the barriers between Olvera and Ramirez.

On March 27, Ramirez sent a letter to the CLRC with copies to Lomali and Hernandez, in which he stated that he

[2] As stated earlier, Ramirez had withdrawn the charge, prior to giving any evidence, on March 16.

[3] Respondent argues that Ramirez knew that Olvera was unable to testify and, therefore unable to contradict Ramirez' testimony. I have considered these facts in making my credibility determinations. I note that the Board may consider as evidence statements of persons who are deceased, including testimony about such statements from parties having a direct legal interest in the proceeding. See, e.g., *Ann's Laundry*, 276 NLRB 269 (1985). However the Board will subject such testimony to the closest scrutiny before deciding what weight to give it. The same principles apply here where Olvera is unavailable to testify for medical reasons. In deciding to credit Ramirez, I gave considerable weight to the fact that Ramirez made prior consistent statements in his affidavit to Region 20, prior to Olvera's incapacity.

was sorry for any ill feelings he had caused his brother union members by going to the NLRB. He ascribed his actions to the feelings which resulted from his father's illness. Ramirez stated his belief that the CLRC would approve his transfer so that he could care for his parents. Ramirez enclosed a copy of his NLRB withdrawal letter with his letter to the CLRC.

According to Ramirez, on April 4, Olvera told Ramirez that he would make a deal with Respondent Local 18 under which Ramirez would be transferred into Respondent Local 18 without bumping any other longshoreman. Olvera said he would give Local 18 something in return to make the deal. He requested a copy of Ramirez' February 18 grievance letter to bring to a meeting with representatives of Respondent Employer. Ramirez agreed to provide Olvera a copy of the letter. Olvera allegedly told Ramirez to be patient and stated that Ramirez had his ''commitment to get this done.'' Olvera promised to keep Ramirez informed of his efforts in support of the transfer. Terry Lane, a vice president of Respondent PMA, testified that Olvera approached him to see if anything could be done to settle Ramirez' transfer request. Lane told Olvera that PMA ''did not have any interest whatsoever in transferring a longshoreman out of Los Angeles and into Sacramento.'' According to Lane, PMA would not have agreed to such a transfer even if Olvera had pressed the issue. As stated earlier, Olvera or Respondent International could not have attained the transfer without PMA consent.

On April 13, Olvera told Ramirez that the employee was being a pest. He told Ramirez that he would arrange a transfer to Sacramento and that Ramirez had his commitment. Ramirez stated that he only wanted to find out what had taken place at Olvera's meeting with the employer representatives. Olvera replied that Rudy Vekich, a representative of Respondent International to the CLRC, had been on vacation. Olvera promised that the CLRC would consider all of the pending transfer requests by the end of the month including that of Ramirez and Michael Belgin, a longshoreman seeking to transfer from Port Hueneme, California to Olympia, Washington. Olvera reassured Ramirez that he would effectuate the transfer.

On May 10, Ramirez called Olvera again to ask about his transfer. Olvera again told Ramirez that the employee was being a pest. He told Ramirez that he was trying to do the employee ''a big favor.'' Ramirez responded by suggesting that Olvera ''walk a mile'' in Ramirez' shoes and experience what it was like ''to be off the payroll for a couple of months.'' Olvera told Ramirez that he didn't want to hear anymore and that Belgin deserved a transfer more than Ramirez. Ramirez replied that he had worked in Sacramento for 12 years, his father was sick and that he had a hardship. Olvera declared, ''to hell with it. You do whatever you have to do.''[4]

[4] Although there is no evidence that Olvera had the authority to transfer Ramirez or to require Respondent Local 18 to permit such a transfer, General Counsel argues that Olvera would not have made his promises to Ramirez had he not had such authority. I find that argument particularly unpersuasive. It is well settled that agency cannot be established through the words of the agent. Further, it is common knowledge that agents and employees often exaggerate their authority. The credible testimony from employer and union witnesses and the documentary evidence establishes that Olvera did not have such authority.

Tyrone Neal, a Los Angeles longshoreman, testified that he spoke with Olvera in July 1989 concerning his attempt to transfer to Northern California. Neal asked Olvera for help in obtaining his transfer. Olvera asked Neal whether he knew John Ramirez. After Neal answered that he knew Ramirez, Olvera stated that he was upset with Ramirez for having filed charges or grievances against Olvera. At the time of this conversation, Ramirez had filed two grievances and two unfair labor practice charges. Olvera asserted that he would have helped Ramirez get into Sacramento but Ramirez ''blew it'' by filing against Olvera. Olvera told Neal that he would not help Neal transfer but that he would help Neal at some later time. Olvera told Neal that he should return to Los Angeles and work toward ''A'' list status.

E. *The Contract*

General Counsel contends that the contract supports Ramirez' position on the transfer. At the time of the transfer request, there was in effect the 1987–1990 Pacific Coast Longshore Contract between Respondent International and Respondent Employer. Supplement I of the contract provided for the voluntary transfer of longshoremen between ports under certain proscribed conditions, subject to the discretion of the home and targeted ports' PLRCs. Thus, supplement I authorized a transfer such as that requested by Ramirez but only with the approval of the PLRC of the port from which a transfer was sought and the PLRC from the port to which a transfer was sought. Hence, Ramirez needed employer and union approval in Los Angeles and employer and union approval in Sacramento. The key factor in approving a transfer would be ''the work and availability record under the Pacific Coast Longshore Agreement.'' There was no reference to, or provision for, a hardship transfer.

The evidence shows that the employer representatives in Los Angeles were opposed to the transfer of longshoremen from that port. The employers did not have sufficient numbers of workers and did not want to decrease that amount. Further, the Employers knew that a number of longshoremen had left the Sacramento area to obtain registration in Los Angeles. The Employers did not want those workers leaving Los Angeles where their services were needed to go to Sacramento, where their services were not needed. Although this case arises out of a complicated coastwise, multiemployer, multiunion dispatch system, the Employers' reasoning is simple and clear. The Employers believed they had a shortage of workers in Los Angeles and had a surplus of workers in Sacramento. It made no sense to allow needed workers to transfer to Sacramento where the Employers would be required to pay guaranteed pay for work not needed or performed. No class ''B'' longshoremen have ever transferred into the Port of Sacramento. No longshoremen have transferred from Los Angeles to any other port in recent years. Since 1985 the Port of Los Angeles has experienced a manpower shortage.

Supplement III of the Pacific Coast Longshore Contract permitted transfers from low work opportunity ports to other ports. Low work opportunity ports are defined as ports where the average hours worked are less than a specified amount. Class ''A'' longshoremen have a preference over class ''B'' longshoreman under supplement III. For class ''B'' longshoremen, a low work port is defined as one where the workers average 14 hours or less per week. Supplement III

permitted transfers from ports where the Employers were paying guaranteed pay to employees because the port had insufficient work for its longshoremen. An illustration of the use of this provision occurred when the class B registration was opened in Sacramento and the PLRC was required to take two LWOP transfers. However, Ramirez was registered in Los Angeles, definitely not a low work opportunity port, and thus, this provision was of no help to him. This provision again demonstrates the Employers' reasoning. The Employers were attempting to minimize the number of workers in low opportunity ports and to increase the number available in the port of Los Angeles.

In May 1989, the Port of Sacramento was designated as a low work opportunity port with respect to class ''B'' longshoremen. This shortfall in average hours worked was caused by the Port's loss of sack rice ships, which was labor intensive work, combined with the addition of 16 newly registered class ''B'' longshoremen.

F. *Ramirez' Status in the Port of Los Angeles*

While he was attempting to transfer to Local 18, on March 3, Ramirez sent a letter to Lomali of Local 13 describing his father's health problems. Ramirez stated that his transfer to Sacramento was still pending before the Sacramento PLRC and that he believed he was entitled to a hardship transfer. He informed Lomali that Local 18 had agreed to permit him to work in Sacramento while his transfer was pending. A copy of this letter was sent to Charles Young, the PMA representative for Southern California.

On April 18, the Los Angeles PLRC sent a letter to Ramirez requesting that he appear before the PLRC to discuss his failure to make himself available for work in the port of Los Angeles. Ramirez and other employees, who had not met the required number of hours of work, were scheduled to appear on May 4. Class B registrants were required to make themselves available for a minimum number of hours each month.[5] Ramirez and the other employees were warned that the failure to appear might result in deregistration. The letter advised Ramirez to contact Lomali if he had any questions concerning the letter.

Upon receiving the April 18 letter from the Los Angeles PLRC, Ramirez called Lomali on April 21. Lomali told Ramirez that the letter was a mistake and that Lomali would talk to Young. Lomali told Ramirez that it was not necessary for the employee to come to the PLRC meeting and that Lomali would take care of the matter. That same date, Ramirez wrote Young stating he did not understand why he had been sent the letter concerning nonavailability for work. Ramirez stated that Young knew he was working in Sacramento because of his father's illness. Further, Ramirez informed Young that Lomali had promised to take care of the matter. Ramirez expressed his belief that his transfer to Sacramento would be awarded.

On May 1, Ramirez sent a letter to Lomali confirming their April 21 conversation. Ramirez confirmed that Lomali had promised that he would take care of Ramirez' problem with the Los Angeles PLRC. Ramirez expressed his belief that he would be permitted to transfer to Sacramento. Ramirez asked that Lomali elevate him to class A status.

On May 4, the Los Angeles PLRC met and considered 27 longshoremen, including Ramirez, that had not met the rule requiring availability for work. The employer representatives argued that Ramirez should be deregistered for not complying with the rule. Lomali opposed deregistration of Ramirez but agreed that Ramirez be placed on ''the non-dispatch list to all companies pending his appearance before the Committee.'' In all 27 cases considered on May 4, PMA moved for deregistration and Local 13 opposed. Action was taken against four employees that night. No action was taken against 23 employees. Seven employees were excused because they were incarcerated. However, Lomali did not inform the PLRC that Ramirez had failed to make himself available because of his father's illness in Sacramento. General Counsel concedes that the employer representatives acted lawfully in enforcing the nonavailabilty rule against Ramirez. However, General Counsel contends that Lomali failed to defend or protect Ramirez because he filed charges against Respondent Unions.[6] The evidence establishes that the illness of a family member has not been accepted as an excuse. The only acceptable excuse appears to be the worker's own inability to report to work.

On June 8, Lomali sent a letter to Peterson at Local 18 stating that Ramirez had the permission of Local 13 to work in Local 18's area for 30 days ''due to personal problems.'' As stated earlier, under the contract, Ramirez also needed the approval of the employer representatives in Los Angeles. While Lomali had given Local 13's approval for Ramirez to work in Sacramento, PMA through Young had not agreed to allow a transfer or to permit Ramirez to work in Sacramento while pursuing a transfer.[7] This refusal was consistent with PMA's longstanding position that it did not have sufficient manpower at the Port of Los Angeles. In addition, Lomali informed Peterson that Respondent PMA was going to move for Ramirez' deregistration based upon his nonavailability for work in Los Angeles. Ramirez was shown this letter on June 12. However, Lomali had told Ramirez on June 7, that PMA was moving for his deregistration.

On June 9 Ramirez sent a letter to Lomali stating that he had just learned of the attempt by the Los Angeles PLRC to decertify him and arguing that there was no basis to do so. Ramirez further argued that he was not given notice at his home of the possible deregistration. Ramirez asked that Lomali ''send authorization to Local 18 so that I could work in Sacramento for another 30 days.'' He sent a copy of this letter to Young at PMA.

On June 21, Ramirez received a reply from the Los Angeles PLRC. The PLRC acknowledged receipt of Ramirez' let-

[5] This rule was explained to Ramirez at the time of his registration in Los Angeles. The General Counsel concedes that this rule is valid and nondiscriminatory. Further, the General Counsel concedes that Respondent Employer lawfully enforced this rule against Ramirez in Los Angeles. Again, while the rule arises in the context of a coastwise, multiemployer multiunion dispatch hall, the purpose of the rule is very simple. The Employers want the employees to be available for work and that if employees do not work, they can lose their jobs.

[6] As of May 4, Ramirez had filed a charge against Respondent International and Local 18, which was withdrawn prior to the giving of any evidence. Ramirez did not file a charge against Local 13 until July 11.

[7] The form indicating that Local 13 through Lomali had permitted Ramirez to travel to Sacramento was blank in the space reserved for a signature by a PMA representative. Thus, the travel clearance, on its face, was defective. PMA approval was missing.

ter of June 9 and that Ramirez had claimed that he had not been available for work because of his father's illness. However, the Committee stated that ''no provision exists for the granting of leaves of absence or 30-day visiting privileges to Class ''B'' longshoremen.'' The Committee directed Ramirez to return to his home port and meet availability requirements or be subject to deregistration. Ramirez could have had himself removed from the nondispatch list simply by appearing at the next Los Angeles PLRC meeting.

On June 22, Ramirez sent a letter to Lomali requesting him to file a grievance on Ramirez' behalf concerning the threat of deregistration in Los Angeles. Ramirez stated that he had permission from his home port to work in Sacramento and submitted proof that Local 13 had agreed to permit him to work in Los Angeles. He requested a copy of any grievance filed on his behalf. Ramirez pointed out that his transfer request was pending before the Coastwise CLRC. Finally, Ramirez argued that it was impossible for him to return to Los Angeles because ''my family is entirely dependent upon my presence in Sacramento during this difficult time.''

On June 27, Ramirez filed a grievance, by letter, with the Los Angeles PLRC. The grievance concerned the threat to deregister him in Los Angeles. Ramirez submitted evidence that he had permission from Local 13 to work in Sacramento and that his appeal to the Joint Coast CLRC was still pending. He repeated his argument that it was impossible for him to return to Los Angeles.

G. *Lomali's Unlawful Statements*

Roy Risso is a Los Angeles longshoreman who arrived with Ramirez in 1987 from Sacramento to obtain registration in Los Angeles. In January, Risso sought permission from Lomali to return to Sacramento for a week. Lomali replied that Risso was ''one of those boys from up North'' that had come down to Los Angeles and taken work away from ''a home boy.'' Lomali referred to six such ''boys from up North'' and said he would attempt to get them deregistered. Risso was able to work in Sacramento after he had satisfied the work availability requirements in Los Angeles.

During August or September, Risso asked Lomali for permission to work a month in Sacramento. Lomali refused on the ground that there was ''some guy in Sacramento suing at the time.'' Ramirez' charge against Respondent Local 13 had been filed on July 11. A few days after this conversation, Risso called Lomali and again asked for permission to stay in Sacramento for a month. Lomali agreed to the request if Respondent PMA also granted Risso permission.

H. *The Removal of Ramirez from the Dispatch List*

From March until early September, Ramirez was dispatched from the Sacramento dispatch hall jointly operated by Respondent PMA and Respondent Local 18. In early September, Ramirez was informed by Buddy Linker the dispatcher that he could no longer be dispatched from the Sacramento hall because the Los Angeles PLRC had placed him on the nondispatch list. Linker showed Ramirez a copy of the minutes of the Los Angeles PLRC placing Ramirez on the nondispatch list. Linker referred Ramirez to Duane Peterson. Peterson told Ramirez that the matter was covered by the coastwise collective-bargaining contract and Local 18 was bound by the ruling.

Richard Anderson, who worked as a casual longshoreman in the Port of Sacramento, testified that in August he overheard a conversation between members of Respondent Local 18's executive board members. According to Anderson, the board members stated that the vote concerning John Ramirez had been quick. They said that they looked through the contract and found a rule under which Ramirez would not be dispatched. The evidence establishes that a representative from Respondent PMA had ordered that the dispatcher, a joint employee of the Unions and Employers, not dispatch Ramirez until he resolved matters with his home port in Los Angeles. The uncontradicted evidence establishes that an employee placed on the nondispatch list in any port is deemed ineligible for dispatch in any other port. Again, the principle is simple. An employee should not be able to avoid discipline by the Employers by simply working for the very same Employers at a different location.

The evidence establishes that the Employers initiated this action against Ramirez. There was no union meeting or vote on placing Ramirez on nondispatch. Under these circumstances, I am not inclined to give any weight to Anderson's testimony. I am sure that Anderson overheard some discussion of Ramirez but I am not convinced of the reliability of what he heard. General Counsel argues that Anderson had no reason to fabricate his testimony. I do not disagree with that supposition, but do not have to credit his testimony where his perceptions seem contrary to known facts. Credible evidence establishes that there was no meeting of the Union's executive board or membership regarding Ramirez' visitor status. His visitor status was revoked as a result of orders from the PMA representative.

I. *The Transfer of Michael Belgin*

Michael Belgin, a class ''B'' longshoreman from Point Hueneme, a low work opportunity port, was permitted to transfer to the port of Olympia, Washington in January 1990. Apparently, General Counsel argues that Belgin's transfer establishes that hardship transfers are permitted. The facts as set forth below do not establish that proposition. Rather the facts of Belgin's transfer establish that employees could transfer from low work opportunity ports to other ports if the joint PLRC committee of each port agreed. The problem with Ramirez' request was that he was seeking to transfer from Los Angeles a high work port. The Employers would not permit a longshoreman from Los Angeles to transfer from a port to where he was needed to a port where he was not needed.

Although there is no contract provision for a hardship transfer, the General Counsel contends that Belgin received a hardship transfer in January 1990. Belgin applied for a transfer in November 1987. The Point Hueneme PLRC agreed to grant a formal written clearance of Belgin's transfer request to the Olympia PLRC. Point Hueneme was a low work opportunity port and longshoremen such as Belgin were being paid under the pay guarantee plan for hours not worked. However, Belgin's transfer request was denied during 1987.

After the transfer was denied, Belgin called Olvera and asked why his transfer had been denied. Olvera told Belgin that a class ''B'' longshoreman could not transfer unless he could establish a hardship basis.

Based on conversations with Olvera, Belgin renewed his request for a transfer in January 1988. Belgin was recovering from back surgery and requested a transfer based on hardship. At Point Hueneme, Belgin was unable to do the physical work. However, at Olympia there was work operating equipment that Belgin could perform in spite of the medical problems with his back. The Olympia PLRC approved Belgin's second transfer request. Belgin had worked out of that port in the past and there was work for him. However, the Point Hueneme PLRC refused to agree to the transfer in December 1988, and again in March 1989.

The Port of Olympia again approved Belgin's request in the summer of 1989. However, the Port of Point Hueneme did not approve the transfer. Olvera spoke to several members of that Committee concerning Belgin's transfer request. The record indicates that Olvera's intervention did not aid Belgin. Rather, the Point Hueneme officials resented Olvera interference in their affairs. On November 13, 1989, Belgin wrote the Point Hueneme Committee reiterating that he could not physically perform the work available in Point Hueneme and thus could not work. However, he could operate the equipment in Olympia and that the PLRC in that port was willing to take him. In addition, Belgin claimed a hardship based on his wife's unwillingness to live in Point Hueneme. On December 18, 1989, the Point Hueneme PLRC agreed to permit Belgin to transfer. On January 12, the Port of Olympia PLRC approved Belgin's transfer effective January 13, 1990, and Belgin was finally transferred.

Analysis and Conclusions

The Alleged Unlawful Statements

General Counsel argues that Respondent Local 13 violated Section 8(b)(1)(A) of the Act when Lomali told Ramirez that the employee had to apologize to the union officials for going to the NLRB. The uncontradicted evidence shows that Lomali told Ramirez to write a letter of apology to the coastwise CLRC and send a copy to Olvera. This conversation took place at a time when Ramirez was attending a convention seeking to get support for his transfer. The reasonable inference drawn from Lomali's remarks is that the filing of the charge had adversely affected the possibility of a transfer and that future charges would adversely affect Ramirez' transfer request. Accordingly, I find that by these statements Respondent Local 13 violated Section 8(b)(1)(A). *Petersburg Associates*, 239 NLRB 1091, 1097 (1978).

General Counsel alleges that Respondent International violated Section 8 (b)(1)(A) through Olvera by warning Ramirez not to cause any trouble. On April 4 Ramirez called Olvera to find out about his transfer request. Olvera told Ramirez not to cause any more trouble. He then told Ramirez he would work out a deal for a transfer. Olvera urged Ramirez to be patient. While General Counsel alleges that the reference to not causing trouble could only mean not filing NLRB charges I do not agree. The reference is so vague that it could mean anything. It could simply be another way of asking Ramirez to be patient. Further, it appears Olvera was not in any way threatening Ramirez but rather trying to reassure him that Olvera would help his effort to obtain a transfer. Accordingly, I shall dismiss this allegation of the complaint.

General Counsel contends that Olvera violated the Act by telling employee Tyrone Neal that Ramirez ''blew it'' by filing charges against Olvera. Olvera told Neal that he was going to help Ramirez get a transfer until Ramirez filed charges against him. I find that such statements tend to threaten employees that the filing of unfair labor practices would result in retaliatory action. Accordingly, I find that Respondent International violated the Act by Olvera's statements. *International Packings Corp.*, 221 NLRB 479, 485 (1975).

According to the uncontradicted testimony of Roy Risso, Lomali threatened to deregister the six members of Local 13 who had moved from Sacramento to Los Angeles. Such a threat of discriminatory conduct by a union official violates Section 8(b)(1)(A). *General Teamsters Local 959 (Frontier Transportation)*, 248 NLRB 743 (1980).

During late August or early September, Risso asked Lomali for permission to work another month in Sacramento. Lomali refused on the ground that there was some guy in Sacramento who was suing the Union. Lomali was apparently referring to the filing of a charge by Ramirez. Such a statement threatens that Respondent Local 13 would retaliate against employees for filing charges with the Board. Accordingly, Lomali's statements violated Section 8(b)(1)(A) of the Act. *International Packings Corp.*, supra.

General Counsel contends that Respondent violated the Act when employee Richard Anderson overheard a conversation between members of Respondent Local 18's executive board concerning a vote on Ramirez' removal from the dispatch list in Sacramento. As stated earlier, I cannot credit Anderson's testimony. The evidence indicates no such vote occurred. A PMA official in Northern California ordered the dispatcher not to dispatch Ramirez because he had been removed from dispatch in Los Angeles. Such action was consistent with the contract and past practice. I, therefore, cannot find a violation based on Anderson's testimony.

The Denial of a Transfer

In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or violations of Section 8(a)(1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a ''motivating factor'' in the employer's decision. Upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The United States Supreme Court approved and adopted the Board's *Wright Line* test in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

The Board has held that the *Wright Line* analysis must be followed in hiring hall cases involving the alleged discriminatory application of hiring procedures. See, e.g., *Teamsters Local 287 (Consolidated Freightways)*, 300 NLRB 539, 548 (1990); *Polis Wallcovering Co.*, 262 NLRB 1336, 1340 (1982).

Ramirez filed an unfair labor practice charge on February 21 concerning the failure of Respondent International and Local 18 to permit him to transfer to Sacramento. He had previously filed a grievance (G.C. Exhs. 10, 47) with the

Sacramento PLRC seeking a transfer. On February 28, Ramirez requested that his transfer request be treated as a ''hardship transfer request.''

The statements of Olvera to Neal that Olvera had ceased helping Ramirez obtain a transfer because Ramirez had filed a charge lends some support to the prima facie case. However, the evidence reveals that Olvera did not have the ability to effectuate such a transfer.

The statements of Lomali support a finding of animus against Ramirez for filing his grievance. Lomali told Ramirez to apologize to the union officials and to Olvera for filing a charge. Further, Lomali told Risso that an employee, presumably Ramirez, had sued the Union (filed a charge). Lomali said he would not help Risso and other employees because of Ramirez' protected conduct. However, Lomali was an agent of Local 13 not Respondent International or Local 18. The evidence indicates that Lomali had little, if anything, to do with the denial of the transfer. For purposes of a prima facie case, I will assume that Lomali's animus against Ramirez for filing his charge is imputable to Respondent Unions.

The burden shifts to Respondents to establish that the same action would have taken place in the absence of the Ramirez' protected conduct. I find for the following reasons that Respondents have met that burden.

Ramirez did not meet the requirements for a transfer under supplement I of the contract. Ramirez' home port, the Port of Los Angeles had not agreed to his transfer. Apparently, Lomali did not object to the transfer or to Ramirez working in Sacramento. However, the employer representatives to the Los Angeles PLRC did not agree to Ramirez' transfer or working in Sacramento. The Employers had not agreed to allow the transfer of any employee out of Los Angeles in recent times. Since 1985 the Employers believed that the Port of Los Angeles was understaffed. Ramirez and Risso were registered in Los Angeles for that very reason. When Olvera approached Lane, PMA vice president, in an attempt to help Ramirez, Lane stated that PMA was not interested in transferring an employee from Los Angeles, where he was needed, to Sacramento, where he was not needed. The Employer's position against such a transfer was clear, consistent, and nondiscriminatory. The union representatives in Los Angeles could not approve a supplement I transfer without the Employer's approval.

Ramirez also did not have approval from the Port of Sacramento side of a supplement I transfer. The Employers believed that too many employees were being added in the new class ''B'' registration. They were bound by the Coast CLRC to add two supplement III transfers and the new registrations ordered by the CLRC. However, the Employers were unwilling to accept Ramirez or any other additional longshoremen. The validity of this position was soon established as the Port of Sacramento became a low work opportunity port within 3 months of the new registration. Thus, even if Local 18 agreed to permit Ramirez to transfer, he did not have the requisite approval of the employer representatives of the Sacramento PLRC. The Employers had never agreed to a supplement I transfer into the Port of Sacramento.

It is clear that Ramirez did not meet the criteria for a transfer under supplement III of the contract. Ramirez was not seeking to transfer from a low work opportunity port. In fact, Ramirez was seeking just the opposite. He wanted to go from a high work port to a low work port.

Finally, there is no basis to conclude that Ramirez would have been given a ''hardship'' transfer absent his filing of the charges. First, there is no hardship provision under the contract. Employee Belgin was able to transfer to the Port of Olympia under supplement I during the same time period. However, Belgin's home port was a low work port and after a long struggle permitted him to leave. His port of destination had sufficient work and was willing to take him. These facts do not support Ramirez' case. Rather they establish that the consistent business consideration in transfers is the staffing needs of both ports involved in a transfer.

Accordingly, I find that Respondents have established that Ramirez would have been denied a transfer for legitimate business considerations even had he not filed charges or grievances. Further, even if the Respondent Unions were partially motivated by unlawful considerations, Ramirez would have been denied a transfer because the Respondent Employers had lawful business reasons for refusing to permit such a transfer. Respondent Unions could not effectuate such a transfer in the face of the lawful Employer refusal. On this record I find Respondents did not violate the Act in refusing to permit Ramirez to transfer to Sacramento.

The Denial of Ramirez' Appeal

The evidence establishes that Olvera told Ramirez that he would be able to arrange a deal to get Ramirez a transfer. Thereafter, Olvera told Ramirez that he was no longer going to support his transfer application. Two months later, Olvera told Neal that he had withdrawn his support of the transfer because Ramirez had filed charges. I found a violation in Olvera's statements to Neal. However, it does not follow that an additional violation should be found.

First, the evidence establishes that Olvera must have exaggerated his authority when speaking to Ramirez. At most, Olvera could affect union support for the transfer. Employer approval was also needed and the facts establish that the Employers were not willing to let Ramirez or anyone else transfer from Los Angeles to another port. Second, Olvera was rebuked by PMA's Lane who told Olvera in no uncertain terms that the Employers were not interested in transferring an employee from Los Angeles, where he was needed, to Sacramento, where he was not needed. Third, Olvera was rebuked when he attempted to get union support for Belgin's transfer.

For the same reasons that I found Ramirez would have been denied a transfer in any event, I find that Olvera would have ceased supporting Ramirez' appeal in any event. At some point it would be clear, or became clear, to Olvera that Ramirez needed employer approval of his transfer in Los Angeles and in Sacramento. Ramirez had support of neither and thus could never be successful in obtaining a transfer. Further, the weaknesses of Ramirez' position were pointed out in the letter of Jim Herman, president of Respondent International, in March.

Accordingly, I find no violation in Respondent International's failure to grant Ramirez' appeal.

The Placement of Ramirez on Nondispatch in Los Angeles

As indicated earlier, Ramirez and all other Los Angeles class ''B'' longshoremen were required to make themselves available for work pursuant to a nondiscriminatory work rule. Ramirez had gone to work in Sacramento with the approval of Lomali. However, Ramirez did not have the approval of the employer representatives to the Los Angeles PLRC. On April 21, Lomali promised Ramirez that he would appear for Ramirez at the May 4 PLRC meeting and see to it that adverse action was not taken against Ramirez. The General Counsel concedes that Respondent PMA acted lawfully in seeking to enforce this nondiscriminatory work availability rule against Ramirez. However, it contends that Lomali failed or refused to protect Ramirez from the rule because Ramirez filed charges.

Lomali attended the May 4 meeting and opposed deregistration of Ramirez and all of the other employees for whom discipline was proposed. Ramirez was treated the same as the others and placed on the nondispatch list. Lomali had not offered the fact that Ramirez was in Sacramento due to his father's illness. The evidence indicates that such a presentation by Lomali would have made no difference. An employee's own illness would be recognized but the illness of a family member was not accepted as an excuse.

The action taken against Ramirez by the Employers is not challenged by the General Counsel. Ramirez had a job in Los Angeles and was simply not showing up for work. Ramirez decided to remain in Sacramento to help his parents. However, the Employers were not obligated to excuse his absence from work in Los Angeles nor give him work in Sacramento. Ramirez had longstanding notice of this rule and had recently been told by both Employer and Union representatives to keep in contact with his home port to avoid such discipline.

For the same reasons that I found Ramirez would have been denied a transfer, I find that he would have been placed on the nondispatch list in any event. At some point, it would become clear, to Lomali that Ramirez needed the approval of the employer representatives to the Los Angeles PLRC to work in Sacramento and that Ramirez never had that approval.

The Removal of Ramirez from the Dispatch List in Sacramento

Months after Ramirez had been placed on the nondispatch list in Los Angeles, a PMA official ordered the dispatcher not to dispatch Ramirez. This action was consistent with the contract and past practice. Ramirez had not fulfilled the work availability requirements in Los Angeles and had not reported to the PLRC to resolve that problem. It made no sense for the Employers to allow him to work elsewhere. Ramirez choose to go to Sacramento. However, the Employers had never agreed to release him from his attendance obligations in Los Angeles nor to subsidize his absence by giving him work in Sacramento.

I find that Respondent Local 18 did not violate the Act in applying this nondiscriminatory work rule to Ramirez. Respondent Local 18 and the Sacramento PLRC were bound by the contract to enforce the discipline imposed upon Ramirez by the Los Angeles PLRC.

THE REMEDY

Having found that Respondent International and Respondent Local 13 engaged in unfair labor practices, I shall recommend that they be ordered to cease and desist therefrom and that they take certain affirmative action to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent Pacific Maritime Association is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International Longshoremen's and Warehousemen's Union, and its Local Unions 13 and 18, are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent International through Robert Olvera violated Section 8(b)(1)(A) of the Act by threatening that Respondent International would retaliate against employees for filing charges or grievances.

4. Respondent Local 13 through Richard Lomali violated Section 8(b)(1)(A) of the Act by threatening that there would be retaliation against employees for filing charges or grievances, and by threatening union discrimination against members from the Sacramento area.

5. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Except as found above, Respondents have not violated the Act as alleged in the complaint. The complaint should be dismissed as to Respondent Local 18 and Respondent PMA.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

A. Respondent International Longshoremen's Union, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening retaliation against employees for filing charges with the NLRB or filing grievances.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of any rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its offices in Northern and Southern California copies of the attached notice marked ''Appendix A.''[9] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive

[8] All motions inconsistent with this recommended Order are hereby denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent International has taken to comply.

B. Respondent International Longshoremen's Union Local 13, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening retaliation against employees for filing charges with the NLRB or filing grievances.

(b) Threatening union discrimination against members of the Union from a different geographic location.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of any rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its offices in Southern California, copies of the attached notice marked ''Appendix B.''[10] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from this Order what steps Respondent Local 13 has taken to comply.

[10] See fn. 9, above.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with retaliation for filing charges with the NLRB or for filing grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in any of your rights set forth above which are guaranteed by the Act.

INTERNATIONAL LONGSHOREMEN AND WAREHOUSEMEN'S UNION

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

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To act together for other mutual aid or protection
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WE WILL NOT threaten employees with retaliation for filing charges with the NLRB or for filing grievances.

WE WILL NOT threaten to discriminate against union members from different geographic areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in any of your rights set forth above which are guaranteed by the Act.

INTERNATIONAL LONGSHOREMEN AND WAREHOUSEMEN'S UNION LOCAL 13